



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Hearing Aid Specialists
Virginia Administrative Code (VAC) citation	18VAC80-20
Regulation title	Board for Hearing Aid Specialists Regulations
Action title	Amendments to Board for Hearing Aid Specialists Regulations 2012
Date this document prepared	December 27, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists conducted a periodic review of 18 VAC 80-20-10 et seq., Board for Hearing Aid Specialists Regulations. On November 2, 2011, the Board voted to initiate regulatory review. Review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to review and/or amend current regulations, to determine, whether they (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Code of Virginia § 54.1-201.5 gives authority to the Board for Hearing Aid Specialists to promulgate regulations. It states, in part, that the Board has the power and duty “To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Board has determined that the proposed regulatory action is essential to review and/or amend current regulations, to determine, whether they (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable, in accordance with Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Changes to current regulations or new regulations will be guided by the principles of Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia,

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No viable alternatives for achieving the purpose of the existing regulation could be determined.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency

has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233. Telephone: (804) 367-8590, Fax: (804) 527-4295, e-mail: hearingaidspec@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on the institution of the family and family stability has been identified.

Periodic review/small business impact review result

If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the

regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response
<p>Danny W. Gnewikow, PhD., Audiologist, CCC, Hearing Aid Specialist</p> <p>Nancy V. Bradsher, Au.D., Audiologist, CCC, Hearing Aid Specialist</p> <p>Monique L. Hall, Au.D., Audiologist, CCC, Hearing Aid Specialist</p> <p>Lauren B. Stone, Au.D., Audiologist, CCC, Hearing Aid Specialist</p> <p>Kelly M. Camarda, M.Ed., Audiologist, CCC, Hearing Aid Specialist</p> <p>Amber S. Wolsiefer, Au.D., Audiologist, CCC, Hearing Aid Specialist</p> <p>Kara E. Martin, Au.D., Audiologist, CCC, Hearing Aid Specialist</p> <p>Brenda M. Dickman, Au.D., Provisional Audiologist, pending CCC, Hearing Aid</p>	<p>Remove the written and practicum examination requirement for Virginia licensed audiologists applying for a Virginia Hearing Aid Specialists license: i) the examination requirement for licensed audiologists does not provide further protection of public health, safety, or welfare; ii) the hearing aid examination requirement for licensed audiologists imposes a negative economic impact on small business owners of audiology practices.</p>	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.

Specialist		
<p>Michael Armstrong, Jr., M.D.</p>	<p>Concerned that individuals can obtain hearing aids without a medical consult, by simply signing a waiver.</p> <p>Unethical advertising by HAS and Audiologists use of the word doctor, not fully disclosing price discounts or adhering to 'bait and switch' laws that are in place for physicians, creating a marketing disadvantage for physicians.</p> <p>Recommends regulations require that the patient receive a copy of his or her audiogram to discuss with their physician and sign and receive a copy of a statement noting the patient has either been evaluated by a physician within the past six months or declines having a medical consult prior to purchasing a hearing aid.</p> <p>Recommends regulations which would make the use of the word "doctor" as potentially misleading in addition to incorporating various ethical guidelines that are currently imposed on physicians.</p> <p>Recommends regulatory changes to testing procedures.</p> <p>Recommends repealing the examination exemption for physicians.</p>	<ul style="list-style-type: none"> • Current regulations require recommendation that a client obtain a written statement signed by a licensed physician. Current regulations do address misleading, deceptive, or untruthful advertising, as well as advertising a particular model or type of hearing aid for sale when purchasers cannot purchase the advertised model or type. The Board encourages anyone knowledgeable of a possible violation of the regulations to submit a complaint for review. • Clients are currently entitled to a copy of their medical records. • Current regulations require that each hearing aid shall be sold through a purchase agreement which shall disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia and that no examination or representation made shall be regarded as a medical examination, opinion or advice. Current regulations do address misleading, deceptive, or untruthful advertising, as well as advertising a particular model or type of hearing aid for sale when purchasers cannot purchase the advertised model or type. • Section 18 VAC 80-20-60 was repealed October 1, 2003 because it duplicated §54.1-1501.A of the <i>Code of Virginia</i>. Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly.
<p>Kevin E. McCurdy, M.ED., Audiologist, CCC-A, FAAA, Licensed Audiologist, Licensed Hearing Aid Specialist, Virginia Resident</p>	<p>Maintain current hearing aid specialist regulations to ensure consumer protection, particularly for audiologists practicing in hearing aids</p>	<ul style="list-style-type: none"> • Board concurs that regulations should protect the health, safety, and welfare of Virginians.

<p>Timothy L. Drake, BC-HIS</p>	<p>Current regulations are proper. There should be no exemptions to being regulated as a hearing aid specialist. Hearing aid specialist should be able to bill government agencies and/or insurance companies. Help to ensure hearing aid specialist can diagnose hearing and prescribe hearing aids.</p>	<ul style="list-style-type: none"> • Board concurs that regulations should protect the health, safety, and welfare of Virginians. Section §54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. • The billing of third parties by hearing aid specialists is outside the scope of the Board for Hearing Aid Specialists. • Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
<p>Stephen M. Krehbiel, NBC-HIS Beltone Hearing Aid Center</p>	<p>Current regulations should be maintained in order to protect the health and safety of the public. Current regulations should also apply to doctors, audiologists and anyone licensed to dispense hearing aids.</p>	<ul style="list-style-type: none"> • Board concurs that regulations should protect the health, safety, and welfare of Virginians. • Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
<p>Kristie Meehan, JMU Audiology Student</p>	<p>Audiologists with doctoral training have more training than hearing aid specialists who are not audiologists and thus should be exempt from hearing aid specialist examination</p>	<ul style="list-style-type: none"> • Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or

		retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i> . Statutory changes are outside of the scope of this periodic regulatory review.
Brenda M. Ryals, Ph.D., CCC-A, Licensed Audiologist, Licensed Hearing Aid Specialist	Virginia licensed audiologists should be exempt from hearing aid specialist examination.	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
Tricia Benjamin, Au.d.	Audiologists should be exempt from hearing aid specialist examination.	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
Paloma Robinson, Au.D., CCC-A, FAAA	Audiologists should be exempt from hearing aid specialist examination.	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
Lauren Paroly, Au.D., CCC-A, FAAAA	Audiologists should be exempt from hearing aid specialist examination.	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of</i>

		<p><i>Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.</p>
<p>Andrea Cossetini, Au.D., CCC-A, FAAA</p>	<p>Audiologists should be exempt from hearing aid specialist examination.</p>	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.
<p>Justine Angilletta, 3rd Year Au.D. Student, James Madison University</p>	<p>Audiologists should be exempt from hearing aid specialist examination.</p>	<ul style="list-style-type: none"> Section 54.1-1501 of the <i>Code of Virginia</i> states provisions for exemption. Amendment to the <i>Code of Virginia</i> must be enacted by the General Assembly. The purpose of this periodic regulatory review is to determine whether the regulations should be terminated, amended, or retained in their current form. The comment speaks to amending and reenacting §54.1-1501 of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.

Code of Virginia § 54.1-201.5 mandates the Board for Hearing Aid Specialists to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Hearing Aid Specialists provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive licenses as a hearing aid specialist or temporary permit. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.